

DECLARATION OF WILLIAM W. NIXON

I, William W. Nixon, hereby declare as follows:

1. I am presently employed by the United States Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), as an Assistant Regional Inspector General for Audit (ARIGA) in our Region VI Office in Fort Worth, Texas. I have served in this capacity since approximately May 1999.
2. I have a Bachelor and Master Degree from the University of Mississippi. I am a licensed Certified Public Accountant (Louisiana), and I am Certified Internal Auditor and Certified Fraud Examiner. I have met the continuing professional education requirements of OIG and professional organizations.
3. The OIG's mission is the independent and objective reporting to the Secretary and the Congress for the purpose of bringing about positive change in the integrity, efficiency, and effectiveness of HUD operations. The OIG became statutory with the signing of the Inspector General Act of 1978. (Public Law 95-452).
4. The Region VI audit office has 26 employees in 5 offices: Albuquerque, NM; Fort Worth, TX; Houston, TX; Oklahoma City, OK; and San Antonio, TX.
5. As an ARIGA, the majority of my responsibility is to manage and supervise auditors responsible for conducting audits of HUD programs and entities. I work under the direct supervision of the Regional Inspector General for Audit (RIGA). Generally, I have 7 to 10 Senior Auditors and Auditors in multiple offices working under my direction. My staff

performs audits/reviews of HUD programs (internals) and those entities that receive HUD funding or guarantees. Typically our audit objectives relate to fraud, waste, and/or abuse and/or effectiveness, efficiency, and/or economy.

6. In my role as an audit manager, I am responsible for
 - a. Selecting and/or managing audits in a productive and efficient manner in support of
OIG goals and objectives
 - b. Planning and scoping of assignments
 - c. Ensuring compliance with Generally Accepted Government Auditing Standards
(Yellowbook), OIG's Audit Operations Manual, and other professional standards
throughout the audit
 - d. Managing the assignments from the initial planning to preparing and issuing the
final report
 - e. Managing the timely completion of audit milestones through bimonthly briefing
papers, work paper reviews, and audit follow-up
 - f. Working with the auditee, HUD, and other agencies to ensure proper resolution of
findings, if any.
7. Bank of America Corporation services more than 3.8 million loans guaranteed by HUD's
Federal Housing Administration (FHA).¹ The National Housing Act, as amended,
established the FHA as an organizational unit within HUD. FHA provides mortgage
insurance to approved commercial lending institutions against losses on mortgages so that
home buyers can obtain mortgage financing at more favorable terms than those
commercially available. FHA mortgage insurance encourages lenders to make loans to

¹ As of May 31, 2011.

otherwise creditworthy borrowers that might not be able to meet conventional underwriting requirements by protecting the lender against losses on defaulted mortgages.

8. As part of our strategic objective to improve the effectiveness of the Federal Housing Administration (FHA), we conducted reviews of the foreclosure practices of five of the largest servicers as they relate to FHA loans that have been foreclosed upon and for which the servicers have submitted a claim for insurance benefits.
9. In October 2010, I was assigned to manage the Bank of America Foreclosure Review. We selected Bank of America for review because it was one of the five largest servicers of FHA loans during the review period. During Federal fiscal years 2009 and 2010,² Bank of America submitted 40,219 FHA claims totaling \$5.7 billion. Bank of America acquired Countrywide in 2008. Approximately 86 percent of its claims during the review period, totaling nearly \$5 billion, were for loans previously serviced by Countrywide. Our objective was to determine whether Bank of America complied with applicable foreclosure procedures when processing foreclosures on FHA-insured loans.
10. Our general objective was to determine whether Bank of America complied with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. To meet our objective, we wanted to obtain an understanding of Bank of America's policies, procedures, and practices. This included reviewing applicable policies and procedures in effect during the review period, interviewing staff, and performing a walkthrough.³ These basic procedures provide auditors with an understanding of how the bank operates to comply with requirements. We, also, wanted to analyze the claims data to

² October 1, 2008, through September 30, 2010

³ As discussed in the Public Company Accounting Oversight Board Auditing Standard Number 5 "An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements" Paragraph 37, in performing a walkthrough, the auditor follows a transaction from origination through the company's processes until it is reflected in the company's financial records. Walkthrough procedures usually include a combination of inquiry, observation, inspection of relevant documentation, and re-performance.

determine benchmarks, compliance, responsibility, etc. of the more than 40,000 claims submitted by Bank of America.

11. Our review was significantly hindered by Bank of America's reluctance to allow us to interview employees or provide data and information in a timely manner and a point of contact that could explain and clarify data. When interviews were permitted, the presence or involvement of the bank's attorneys limited the effectiveness of those interviews. On a number of occasions, the bank's attorneys refused to allow employees to answer questions. For instance, my staff conducted an interview on November 8, 2010, with two Bank of America Senior Vice Presidents, in-house counsel, and outside counsel to discuss the bank's new foreclosure process. When my staff asked what was the difference between the old and new process, counsel stated they had not briefed the Senior Vice Presidents to discuss the old process, but a Senior Vice President might be able to provide a high level overview. The Senior Vice President said that the strengths of the new system were a well-documented process and all evidentiary documents were stored in one place at one time. No other documentation or details were provided to evaluate the statement. In another example, staff held an interview on November 10, 2010, with an Assistant Vice President, in-house counsel and outside counsel regarding the practices of signing affidavits. When the Assistant Vice President was asked if he was aware of any changes in the process, outside counsel advised that employees might not be aware of the changes and that Bank of America had provided another employee to explain the changes.⁴ The Assistant Vice President did respond that he was aware of the changes but did not provide additional details. Using the incomplete data that the bank provided, this Assistant Vice

⁴ The counsel was referring to the previously discussed interview with the two Senior Vice Presidents.

President signed more than 75,000 documents related to foreclosures during our review period.

12. To interview employees regarding their duties and responsibilities without these hindrances, we requested that the Department of Justice issue Civil Investigative Demands (CIDs) to current and former employees to compel testimony. In December 2010, the Department of Justice issued the CIDs. However, this is a less effective way of obtaining an understanding of procedures and practices used by the bank.
13. Bank of America was slow in providing basic information as they had filtered the requests to one person and then attorneys reviewed the information before it was provided. Initially, the bank's attorney required us to formally request from a central person all information including readily available information referred to by employees that we interviewed. The delay in providing this readily available information hampered our efforts in understanding the bank's processes and controls. Further, we could not narrow our requests down as we did not know what this information included. Also, since the bank did not associate a person with the requests, we would have to formally request any clarification further delaying our work. For instance, a staff member and I interviewed a Vice President in the document execution group along with a bank representative and in-house counsel regarding the controls and practices in place in the document execution group on October 22, 2010. In explaining in how they did their job of preparing foreclosure documents for signature, she referenced a cover sheet that her group would check the name of the person that should sign along with other information. We had to request this cover sheet, which we did on October 22, 2010. We received this basic information on October 25, 2010. What the bank provided prompted several additional questions that needed answering. Further, other employees may have been referring to this

document when describing their role and responsibilities. In an example of unnecessarily burdening us with work, in early November, outside counsel requested that we return or destroy work papers containing previously supplied information that the outside counsel had not Bates Stamped. Some of this would have included copies of the HUD required files that the bank provided.

14. With respect to the October 22, 2010 interview with the Vice President in the document execution group discussed in paragraph 13, we had previously reached an agreement with the bank that we would be allowed to perform walkthroughs. When we asked for a walkthrough of the document execution group, we were told that it would have to be rescheduled as the Vice President did not have anyone available. When we rescheduled the walkthrough in concert with another interview to obtain an understanding of the document execution group's procedures and practices, the outside counsel and the Vice President asserted that they did not understand the need for a walkthrough and instead showed my staff a set of file cabinets. This Vice President signed almost 47,000 foreclosure documents and notarized 45 foreclosure documents during the review period.
15. To overcome these obstacles, we issued two OIG subpoenas requesting documents. However, the data and information provided in response to our subpoenas were not complete. For instance, Bank of America provided only excerpts of subpoenaed personnel files, did not provide complete foreclosure documents for the items in the sample, provided conflicting affiant information, and could not identify all authorized notaries. Further, it provided FHA insurance claims data for only two of its servicing IDs, omitting approximately 4,600 records for its other servicing IDs. In another instance, it provided data that identified signers, notaries, and attorneys for each claim for only one-third of its

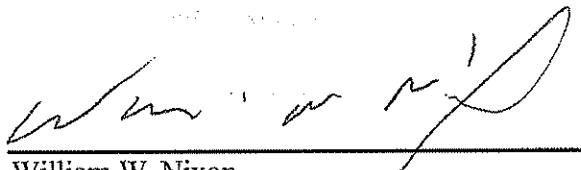
FHA claims records. These omissions impaired our review because they prevented us from measuring the impact of Bank of America's foreclosure practices.

16. All the matters set forth above are based on personal knowledge or information provided to me in my official capacity as an OIG ARIGA.

17. This information is provided solely to explain the difficulties HUD OIG encountered in obtaining documents and information from Bank of America during the course of our review. The underlying report has not been publicly made available and is being held as privileged information as pre-decisional in nature and having been prepared in light of possible future litigation, and will not be produced to anyone outside of the Department of Justice or other law enforcement agencies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2011
in Fort Worth, TX.



William W. Nixon
Assistant Regional Inspector General for Audit
Office of the Inspector General
U. S. Department of Housing
and Urban Development
819 Taylor Street
Suite 13A09
Fort Worth, Texas 76102

